

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
WESTERN DIVISION

JAMES ERBES,)	No. ED CV 12-01374-SJO (VBK)
)	
Petitioner,)	ORDER ACCEPTING FINDINGS AND
)	RECOMMENDATIONS OF UNITED STATES
v.)	MAGISTRATE JUDGE
)	
E. VALENZUELA,)	
)	
Respondent.)	
_____)	

Pursuant to 28 U.S.C. §636, the Court has reviewed the Petition for Writ of Habeas Corpus ("Petition"), the records and files herein, and the Report and Recommendation of the United States Magistrate Judge ("Report"). Further, the Court has engaged in de novo review of those portions of the Report to which Petitioner has objected.

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1 **IT IS ORDERED** that: (1) the Court accepts the findings and
 2 recommendations of the Magistrate Judge, and (2) the Court declines to
 3 issue a Certificate of Appealability ("COA").¹

4 June 14, 2013.

S. James Otero

5 DATED: _____

6 S. JAMES OTERO
 7 UNITED STATES DISTRICT JUDGE
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15 ¹ Under 28 U.S.C. §2253(c)(2), a Certificate of Appealability
 16 may issue "only if the applicant has made a substantial showing of the
 17 denial of a constitutional right." Here, the Court has accepted the
 18 Magistrate Judge's finding and conclusion that the Petition is time-
 19 barred. Thus, the Court's determination of whether a Certificate of
 20 Appealability should issue here is governed by the Supreme Court's
 21 decision in Slack v. McDaniel, 529 U.S. 473, 120 S. Ct. 1595 (2000),
 22 where the Supreme Court held that, "[w]hen the district court denies
 a habeas petition on procedural grounds without reaching the
 prisoner's underlying constitutional claim, a COA should issue when
 the prisoner shows, at least, that jurists of reason would find it
 debatable whether the petition states a valid claim of the denial of
 a constitutional right and that jurists of reason would find it
 debatable whether the district court was correct in its procedural
 ruling." 529 U.S. at 484. As the Supreme Court further explained:

23 "Section 2253 mandates that both showings be made before the
 24 court of appeals may entertain the appeal. Each component
 25 of the § 2253(c) showing is part of a threshold inquiry, and
 26 a court may find that it can dispose of the application in
 a fair and prompt manner if it proceeds first to resolve the
 issue whose answer is more apparent from the record and
 arguments." Id. at 485.

27 Here, the Court finds that Petitioner has failed to make the
 28 requisite showing that "jurists of reason would find it debatable
 whether the district court was correct in its procedural ruling."